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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,660	01/23/2004	Joseph Michael Coldren	574-001	9389

7590

06/15/2005

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EXAMINER

CHAMBERS, MICHAEL S

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/763,660

**Applicant(s)**

COLDREN, JOSEPH MICHAEL

**Examiner**

Mike Chambers

**Art Unit**

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 9-13 and 16-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Palmieri ( 5288083). Palmieri discloses a bat portion having a channel formed therein, wherein said channel lies on a longitudinal axis of symmetry of said bat portion (fig 3).

As to claim 2 : Palmieri discloses a wire portion having a ball portion movably coupled thereon (fig 2).

Also,

Claims 1, 2 ,5, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Zentner ( 4944513).. Zentner discloses a bat portion having a channel formed therein, wherein said channel lies on a longitudinal axis of symmetry of said bat portion (fig 3).

As to claim 2 : Zentner discloses a wire portion having a ball portion movably coupled thereon (fig 8).

As to claim 5: See claim 1 rejection.

As to claim 6 : Zentner discloses a channel portion ( fig 9 ).

As to claim 7 : Zentner discloses two attachment portions ( fig 9 ).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zentner ( 4944513) with regard to claim 1 and further in view of Bostick ( 5873798). Zentner discloses the elements of claim 3, however it fails to disclose the use of a U shaped frame. Bostick discloses the use of a U shaped frame. It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the frame of Bostick with the apparatus of Zentner in order to provide a complete easily transportable training device. The structure of the support frame is not critical to the operation of the device. One of ordinary skill could have selected any one of several equivalent structural based on cost and design considerations.

As to claim 4: Bostick discloses the use of a U shaped frame (fig 1).

Claims 8, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zentner ( 4944513) in view of Bostick ( 5873798). Bostick discloses at least two wire containment pin portions which comprise a plurality of removable wire pin portions. Items 20 and 22 broadly read on the claim language. It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the attachment means of Bostick with the apparatus of Zentner in order to provide an inexpensive and

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easily transportable training device. The structure of the support frame is not critical to the operation of the device. One of ordinary skill could have selected any one of several equivalent structural based on cost and design considerations.

As to claim 14: See claim 5 rejection. The method claimed would naturally be used by one using the device.

As to claim 15: See claim 7 rejection. The method claimed would naturally be used by one using the device.

### ***Allowable Subject Matter***

Claims 9-13 and 16-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The tethered ball and split bat device is well known in the art. The current claim language centers around the structure holding the playing device. The selection of various structures do not affect the operation of the device and are considered design choices. No patentable features are found in the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is (571) 272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

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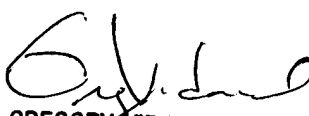
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571) 272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5873798\*4944513\*5288083\*3092408\*463055062  
23358\*6042491

Michael Chambers  
Examiner  
Art Unit 3711

June 7, 2005

  
GREGORY VIDOVICH  
SUPERVISORY (PATENT EXAMINER  
TECHNOLOGY CENTER 3700